

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHERRI R. LOWE,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
VS.)	
)	3:12-CV-1725-G (BH)
VIEWPOINT BANK,)	
)	
Defendant.)	

ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

After reviewing all relevant matters of record in this case, including the findings, conclusions, and recommendation of the United States Magistrate Judge and any objections thereto, in accordance with 28 U.S.C. § 636(b)(1), the undersigned district judge is of the opinion that the findings and conclusions of the magistrate judge are correct and they are accepted as the findings and conclusions of the court.

Defendant ViewPoint Bank's motion to dismiss for failure to state a claim, or, in the alternative, for summary judgment, filed December 8, 2013 (docket entry 63) is **GRANTED** on plaintiff's claims under 42 U.S.C. § 1983, the Federal Reserve Act

(FRA), 12 U.S.C. § 503, the RFP, breach of good faith, and defamation and slander. The motion is **DENIED** as to plaintiff's remaining claims, *i.e.*, breach of ordinary care under the UCC, negligence and breach of contract. Plaintiff Sherri R. Lowe's motion for summary judgment for all claims against defendant Viewpoint Bank, filed January 3, 2014 (docket entry 68), is **DENIED**.

The court did not consider the new evidence and legal claims presented in the defendant's objections. While a "district court has wide discretion to consider and reconsider the magistrate judge's recommendation, . . . litigants may not . . . use the magistrate judge as a mere sounding-board." *Freeman v. County of Bexar*, 142 F.3d 848, 852 (5th Cir. 1998). In this instance, the court concludes that reviewing the defendant's objections would encourage this very behavior. The defendant should have alleged the plaintiff's failure to plead damages and proffered the additional exhibit before the magistrate judge. In order for the court to consider the substance of the defendant's objections, they will have to file for leave to file a second motion for summary judgment.

SO ORDERED.

September 16, 2014.



A. JOE FISH
Senior United States District Judge